



United States Department of Agriculture
Rural Development
Pennsylvania State Office
www.rurdev.usda.gov/pa

PA AN No. 1234 (1940-G/1794)
December 8, 2008

SUBJECT: Environmental Compliance When Construction is Started Prior to
Pre-application/Application or Environmental Review

TO: All Employees
Rural Development, Pennsylvania

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify the environmental requirements contained in RD Instruction 1940-G and 7 CFR 1794 when construction has been started prior to Pre-application/Application/Environmental Review. Some of our field offices have issued a "Letter of No Prejudice" as Rural Development's consent to start construction or are agreeing with requests to continue construction. A "Letter of No Prejudice" or RD concurrence to proceed with construction must not be issued without the completion of the appropriate environmental review. For the purposes of this AN, all Rural Development Programs in Pennsylvania are collectively referred to as "Rural Development."

COMPARISON WITH PREVIOUS AN:

This replaces PA AN No. 1217 (1940-G/1794) that expired on June 30, 2008.

IMPLEMENTATION RESPONSIBILITIES:

Notice to the applicants and lenders: At the earliest point of contact, the Rural Development processing office will notify the Applicants and Lenders that the environmental review must be completed prior to the issuance of a conditional commitment for guaranteed loans; or prior to loan approval or obligation of funds for direct loans and grants. Rural Development will ensure that all guaranteed lenders and re-lenders (such as intermediaries) are aware of this requirement and will recommend that each lender provide this notice to their client at the earliest point of contact between the guaranteed lender and their client. Refer to RD Instruction 1940-G §1940.309(e), §1940.315 and 7 CFR 1794 §1794.11 and §1794.15(a).

EXPIRATION DATE:
December 31, 2009

FILING INSTRUCTIONS:
Preceding RD Instruction 1940-G/
7 CFR 1794 Policies and Procedures

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S.W., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382(TDD).

The Rural Development processing office will also notify the Applicant that, prior to the completion of the environmental review, the Applicant must not take any actions such as initiation of construction that may have an adverse impact on the environment or limit the range of alternatives to be considered by Rural Development during the environmental review process.

RD AN No. 4379 (1940-G) addresses 'Environmental Compliance When Construction Has Been Initiated.' The applicant must be informed that Rural Development must fulfill its environmental compliance responsibilities and that, if environmental compliance cannot be achieved, the approval for financial assistance may be in jeopardy. The Applicant may have to halt or delay construction until Rural Development has completed the environmental review. In addition:

- Rural Development must determine and document whether or not there is any evidence that the Applicant initiated construction to avoid environmental compliance requirements, such as ignoring prior Agency notice.
- Rural Development must document whether protected resources have been or will be affected or destroyed by the construction. Immediate steps must be taken by Rural Development to identify any remaining resources and to place appropriate mitigation measures to protect remaining resources.
- Rural Development is required to consult with other Federal and State agencies to identify what resources may have been affected or destroyed, what remains, and to develop appropriate mitigation measures.

7 CFR 1780 §1780.9 addresses reimbursement of construction costs incurred prior to Agency funding approval.

- Applicant/construction must meet all of the Agency's approval requirements as stated in 7 CFR 1780 and all of the environmental requirements stated in 7 CFR 1794 prior to Agency loan or grant approval.
- The post-approval of construction should not be the result of poor planning by the Applicant or for the purpose of circumventing Agency requirements.

To avoid the above situations, Rural Development should counsel Applicants and consultants, and guaranteed lenders should counsel their clients, to consider their total financial assistance needs at the earliest planning stages of their proposals. Applications to Rural Development must be filed prior to the start of construction.

Construction Started Prior to Submitting Pre-application/Application to Rural Development: There are no provisions in RD Instructions 1940-G or 7 CFR 1794 for Rural Development to authorize or permit the construction of a project by a potential Applicant without conducting appropriate environmental review. Before Rural Development concurs to proceed with any construction activity, the environmental review must be completed, even if the construction was started by the Applicant prior to submitting a pre-application/application. Refer to RD AN No. 4379 (1940-G) "Environmental Compliance When Construction Has Been Initiated", prior to contacting Rural Development.

Emergency Situations: Environmental requirements applicable to emergency circumstances involving an immediate or imminent danger to public health or safety are addressed in RD Instruction 1940-G §1940.332 and 7 CFR 1794 §1794.21(a) (4). The Administrator reserves the right to determine the procedure under such circumstances. The Council on Environmental Quality's (CEQ) regulations limits such arrangements to actions necessary to control the immediate impacts of the emergency. All other actions remain subject to National Environmental Policy Act (NEPA) review.

Therefore, projects proposing construction or under construction prior to completion of the environmental review process must be discussed with the Program Director and the status of environmental compliance with the SEC. In emergency situations, Rural Development could consider financing such applications. Reasons such as "to meet the time schedule in intermunicipal agreements/ DEP Consent Orders" which usually takes months or years to finalize are not considered emergencies, and are not sufficient justification for permitting construction without the completion of an environmental review. Rural Development shall not authorize or permit the construction of such projects without the completion of the appropriate environmental review.

/s/ Gary H. Groves

GARY H. GROVES
State Director